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Policy 428: Immigration Guidelines [DRAFT]

428.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines to members of the Chula Vista Police Department relating to immigration and interacting with federal immigration officials.

428.2 POLICY

It is the policy of the Chula Vista Police Department that all members make personal and professional commitments to equal enforcement of the law and equal service to the public. Confidence in this commitment will increase the effectiveness of this department in protecting and serving the entire community and recognizing the dignity of all persons, regardless of their race, national origin or immigration status.

Nothing in this policy is intended to prohibit members from responding to calls for service involving a violation of a state or local criminal law or during an immigration enforcement action by a Federal agency where the safety of the public or a law enforcement officer, including an immigration enforcement officer, is in danger. In these limited circumstances, members may assist any law enforcement official, even if those officials are engaged in immigration enforcement, but only when the member is enforcing state law.

428.3 VICTIMS AND WITNESSES

To encourage crime reporting and cooperation in the investigation of criminal activity, all individuals, regardless of their immigration status, must feel secure that contacting or being addressed by members of law enforcement will not automatically lead to immigration inquiry and/or deportation. While it may be necessary to determine the identity of a victim or witness, members shall treat all individuals equally and without regard to race, national origin or immigration status in any way that would violate the United States or California constitutions.

428.3.1 BASIS FOR CONTACT

The fact that an individual is suspected of being undocumented shall not be the sole basis for contact, detention or arrest.

428.3.2 DIRECTED ENFORCEMENT ACTIONS

The Chula Vista Police Department does not conduct sweeps or other concentrated efforts to detain suspected undocumented persons.

When any enforcement efforts are increased in a particular area, equal consideration should be given to all suspected violations and not just those affecting a particular race, national origin, immigration status or other group.

The disposition of each contact (e.g., warning, citation, arrest), while discretionary in each case, should not be affected by such factors as race, national origin, or immigration status.

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428.3.3 ICE REQUEST FOR ASSISTANCE

If a specific request is made by ICE or any other federal agency, this department will provide available support services, such as traffic control or peacekeeping efforts, during the federal operation. Examples where this department may provide support or assistance to ICE or any other federal agency include, but are not limited to, the following: Under the direction of the Watch Commander, officers may be authorized to respond to a law enforcement agency's request for emergency assistance, or to respond to an agency's request for assistance with crowd control or traffic control, or to respond to a violation of a state or local criminal law during an immigration enforcement action by a Federal agency, or to respond to any circumstance where the safety of the public or a law enforcement officer, including an immigration enforcement officer, is in danger.

Members of this department should not participate in such federal operations as part of any detention team unless it is in direct response to a request for assistance on a temporary basis or for officer safety. Any detention by a member of this department that is related to such a response should be based upon the reasonable belief that an individual is involved in criminal activity and not solely on the individual's race, national origin, or immigration status.

428.3.4 IDENTIFICATION

Whenever any individual is reasonably suspected of a criminal violation (infraction, misdemeanor, or felony), the investigating officer should take reasonable steps to determine the person's identity through valid identification or other reliable sources.

With respect to confirmation of identity for the purposes of criminal prosecution, the Office of the San Diego County District Attorney has determined the following:

Successful prosecution of criminal violators requires that officers identify suspects with the "functional equivalent of a driver's license" which includes either a California or other state-issued driver's license or identification card or US Military Identification Card. Identification from the home country of foreign nationals, as a practical matter, is of diminished value for prosecution purposes. Absent such necessary identification, successful prosecution will require that foreign national suspects be booked in order to be properly identified. (Source: Formal correspondence dated December 3, 2003, District Attorney, County of San Diego.)

The Mexico Consulate may issue a "Matricula Consular," or "Mexican Consulate Identification Card" to Mexican citizens residing in the United States. This is considered a valid form of identification for victims, witnesses, or reporting persons, but is not satisfactory for suspects or arrestees.

In cases where an offender would normally be issued a citation and released for an infraction or misdemeanor violation, but due to their national origin or immigration status, cannot provide identification that meets District Attorney requirement for prosecution, the offender may be taken to the station to collect fingerprints and/or to allow the offender a reasonable attempt to confirm their identity (e.g. through telephone calls or other resources). If, after being taken to the station and having fingerprints taken, the officer is reasonably satisfied with the offender's identification, the officer should complete the original citation without additional consideration of the offender's race, national origin, or immigration status.

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428.3.5 ARREST

If the officer intends to take enforcement action and the individual is unable to reasonably establish his/her true identity, the officer may take the person into custody on the suspected criminal violation (see Vehicle Code § 40302a, and Penal Code § 836, if pertinent to the circumstances). The Watch Commander shall approve all such arrests.

428.3.6 BOOKING

If the officer is unable to reasonably establish an arrestee's identity, the individual may, upon approval of the Watch Commander, be booked into jail for the suspected criminal violation and held for bail.

A person detained exclusively pursuant to the authority of Vehicle Code § 40302(a) for any Vehicle Code infraction or misdemeanor should not be detained longer than reasonably necessary to establish his/her true identity.

428.3.7 USE OF IMMIGRATION AUTHORITIES AS INTERPRETERS

Members may not use immigration authorities as interpreters for law enforcement matters relating to individuals in custody.

428.4 IMMIGRATION INQUIRIES PROHIBITED

Officers shall not inquire into an individual's immigration status for immigration enforcement purposes (Government Code § 7284.6).

428.4.1 U VISA NONIMMIGRANT STATUS

Under certain circumstances federal law allows temporary immigration benefits to victims and witnesses of certain qualifying crimes (8 U.S.C. § 1101(a)(15)(U)). A petition for a U-Visa from the U.S. Citizenship and Immigration Services must be completed on DHS Form I-918 by the assigned investigator or the assigned prosecutor and must include information on how the individual can assist in a criminal investigation or prosecution in order for a U-Visa to be issued.

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Any request for assistance in applying for U-Visa status should be forwarded in a timely fashion to the detective supervisor assigned to supervise the handling of any related case. The detective supervisor should do the following:

- (a) Consult with the assigned detective to determine the current status of any related case and whether an update on the case is warranted.
- (b) Review the instructions for completing the certification if necessary. Instructions for completing Form I-918 can be found on the DHS website at <http://www.uscis.gov/portal/site/uscis>.
- (c) Contact the appropriate prosecutor assigned to the case, if applicable, to ensure the certification has not already been completed and that certification is warranted.
- (d) Timely address the request and complete the certification if appropriate.
- (e) Ensure that any decision to complete or not complete the form is documented in the case file and forwarded to the appropriate prosecutor. Include a copy of any completed certification in the case file.

428.5 JOINT TASK FORCES

The Chula Vista Police Department may allow personnel to participate with a joint law enforcement task force, including the sharing of confidential information with other law enforcement agencies for the purposes of task force investigations, so long as all of the following conditions are met:

- (a) The task force's primary purpose is not immigration enforcement; and
- (b) Enforcement or investigative duties are primarily related to violations of state or federal law unrelated to immigration enforcement (Government Code § 7284.6(b)(3)).

428.5.2 FEDERAL SUPERVISION FOR PURPOSES OF IMMIGRATION PROHIBITED

The Department shall not place officers under the supervision of, or to be deputized by, federal agencies for the purposes of immigration enforcement (Government Code § 7284.6(a)(2)).

428.5.3 JOINT TASK FORCE REPORTING

If the Chula Vista Police Department chooses to participate in a joint law enforcement task force, for which the Department has agreed to dedicate personnel or resources on an ongoing basis, it shall submit a report annually to the Department of Justice, as specified by the Attorney General. The Chula Vista Police Department shall report the following information, if known, for each task force of which it is a member:

- (a) The purpose of the task force.
- (b) The federal, state, and local law enforcement agencies involved.
- (c) The total number of arrests made during the reporting period.
- (d) The number of people arrested for immigration enforcement purposes (Government Code § 7284.6(c)(1)).

All records described in this subdivision shall be public records for purposes of the California Public Records Act (Chapter 3.5 (commencing with Section 6250)), including the exemptions provided by that act and, as permitted under that act, personal identifying information may be redacted prior to public disclosure. To the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation, or would endanger the successful completion of the investigation or a related investigation, that information shall not be disclosed (Government Code § 7284.6(c)(3)).

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If more than one California law enforcement agency is participating in a joint task force that meets the reporting requirement pursuant to this section, the joint task force shall designate a local or state agency responsible for completing the reporting requirement (Government Code § 7284.6(c)(4)).

To the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation, or would endanger the successful completion of the investigation or a related investigation, that information shall not be included in the Attorney General's report (Government Code § 7284.6(d)).

Department personnel may send to, or receive from, federal immigration authorities, information regarding the citizenship or immigration status, lawful or unlawful, of an individual, or request from federal immigration authorities immigration status information, lawful or unlawful, of any individual, or maintain or exchange that information with any other federal, state, or local government entity, pursuant to Sections 1373 and 1644 of Title 8 of the United States Code (Government Code § 7284.6(e)).

428.6 OFFICE SPACE

The Chula Vista Police Department shall not provide office space exclusively dedicated for immigration authorities (Government Code § 7284.6(a)(5)).